IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 1093 of 2001

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment/Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment/Order ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

KAPURCHAND MARKANDE RAGHUNATH PANDEY

VERSUS

STATE OF GUJARAT

Appearance:

MR KB PANDE for Petitioner

GOVERNMENT PLEADER for Respondents

CORAM : MR JUSTICE S.K. KESHOTE

Date of Decision : 27/04/2001

C.A.V. JUDGMENT

#. By this petition under Article 226 of the Constitution of India, the petitioner-detenu is praying for quashing and setting aside of the order dated 23-5-2000 of District Magistrate, Ahmedabad. Under this order of the District Magistrate, Ahmedabad, the petitioner was detained under the Prevention of Black Marketing and Maintenance of Supplies of Essential

Commodities Act, 1980 (hereinafter referred to as `the Act, 1980').

#. Learned counsel for the petitioner raised the following contentions challenged the legality, propriety and correctness of that order:

(i) The petitioner is deprived of hi valuable right of making effective representation against the detention order under Article 22 (5) of the Constitution of India. Elaborating this contention, learned counsel for the petitioner submitted that the papers enclosed to the order of detention, supplied to the petitioner, are in Gujarati language, which is not the petitioner's mother tongue. So it is the grievance of the petitioner that the documents should have been supplied to the petitioner translated in Hindi, his mother-tongue.

(ii) The order of detention was made on 23-5-2000, whereas the petitioner was arrested on 9-1-2001. The total period of detention is only six months, and in these circumstances, what the learned counsel for the petitioner contended that by lapse of time, the order of detention has become meaningless and baseless. It is submitted that the petitioner was not declared absconding under section 7 of the Act, 1980.

(iii) The order annexure `A' dated 23-5-2000 was not approved by the State Government or any competent authority within 12 days as required under section 3(3) of the Act, 1980, which is mandatory in nature. For non-approval of that order, within stipulated period, the order of detention of the petitioner comes to an end.

(iv) The representation of the petitioner was rejected by passing a cryptic and non-speaking order. It is submitted that the respondent-State Government and the Advisory Board in confirming the order of detention exercises quasi-judicial functions and where the representation is to be rejected, legal obligation lies upon these authorities to consider all the contentions raised and to give reasons in support of rejection thereof. Non-reasoned order on the representation, what the counsel for the petitioner submitted, shows absence of fairness and transparency in passing

of the approval order and it without any application of mind.

In support of his contention, learned counsel for the petitioner placed reliance on the following decisions:

1988 (2) GLR 1239 Brijlal Ambaram vs. Commissioner of Police, Surat.

AIR 1990 SC 1984 S.N. Mukherjee vs. Union of India.

#. Reply to the special civil application has been filed by the respondent No.2, State of Gujarat. Reply to the special civil application has also been filed by the detaining authority. Copy of this reply was given to the counsel for the petitioner. The petitioner has not filed rejoinder to the reply of either of the respondents. On the direction of the Court, both the petitioner and the respondent filed translation of the statement of the petitioner recorded on 14-4-2000.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

Re.: Contention No.1:

#. In the special civil application, the petitioner in para No.(1) at page No.4 made the following averments :

"The petitioner is inhabitant of U.P.. His mother tongue is Hindi. The petitioner studied in Hindi medium at Adarsh Hindi Vidhyalaya, Fatehganj Baroda upto Xth standard. It was known to the respondent No.1 that the petitioner does not understand Gujarat well and the mother-tongue of the petitioner is Hindi. It is pertinent to note that all the papers pertaining to the said detention order which were supplied to the petitioner were in Gujarat language. Therefore, the petitioner was no able to understand the same, and hence, deprived of valuable right of representation before appropriate authority in time. Thus, action of the respondent are in violation of Article 14, 21 and 22 of the Constitution."

The representation filed by the petitioner against the order of his detention is there at page no.34 of the petition. This is in Hindi and the relevant portion i.e. para-1 and 2, is reproduced on a separate sheet

that follows:

1. xZsB xVndli xDr xSwfkbk xZrbm xUlfkbD xDkbfkClA xDr xiBSYsxZrB xSlar xFar xDbmX xSu xiv xVUwUr xVOUrZrB xCvb xiZJUr xZrB xCiZRsx xjnA xDwauDl xfr xiYm xDkFJkQ xFnJbkQm xYkhkZrB xjs xy xClAidlar xCni xUlfkbD xCuNsxb xDr xXkbrZrB xZsB xiBVoPsx xflfbP xijlQ xCkVDr xiZDwh xEndkik xUjmB xDb xiDQk xDwauBDl xZsB xEnS xCmir xYdmYkAQl xiZJ xUjmB xiDQk xy xCmi xdlar xZrbk xaj xDRU xjs xDl xZnKr xCkVDr xiZDwh xZrbr xVDwhZrB xUlfrSU xDbUr xDr xjDir xfBHlQ xbDwEk xFak xjs xCvb xCrik xUlfkbD xCTlDkbmDk xDpQwa xYkbQma xiBflTkUDr xEldkW xjs xCvb xFrbDkUnUm xjs xy xCkVDk xTwakU xZsB xCni xCub xiflUa xCkDbwhlQ xDbUr xDm xCmJkJQ xHkjQk xjnA xDl xCFb xDkUnUDm xDuCm xCSkdQZrB xFnJbkQZrB xDuCm xjlUwSm xYkhm xJJikjX xXlbkJZkU xjsxB xQu xFnJbkQm xYkhk xDr xDkFJkQ xCub xSiwQkfrJu xDk xYkhkBQb xCvb xCUnfkS xYdmYkAQm xUwaka xDm xVwbDmak xDbUrDr xdlar xCkfgwaD xjs xCvb xCrik xYkhkBQb xDbDr xDkFJkQ xCSkdQZrB xXkDkaSk xSmar xJkQr xjsB xy xZsB xCkSgsx xjlUwSm xflTwakda, xWQrFBJ, xfNuSbkZrB 10 xfmA xDlQkX xQD xjlUwSm xZkTwaZ xir xVOk xjnA xy xZsB xUr xCmiir xVjdr xYm xSl.14.04.2000 xDr xZrbr xUlfrSUZrB xYm xikW xXQkak xjs xDl xZsB xFnJbkQm xYkhk xDnI xDnI xiZJ xiDQk xjnA xZFb xZnKr xFnJbkQm xYkhkDk xiBVoPsx xJwKxkU xUjmB xjs xy xZrbk xiflUa xCkVir xUlfrSU xjs xDl xUlfkbD xDkbfkCm xCvb xCniDr xDkFJkQ xilbwW xSrEUrDm xJbnbQ xUjmB xjsB xCnir xYdm xYkAQm xiZJUrDm xYm xJbnbQ xjs xiu xZsB xFnJbkQm xYkhkZrB xSlar xFar xDkFJkQ xYdmYkAQm xiZJ xUjmB xiDQk xjnA xClidlar xZsB xCkVDu xiBVoPA xflfbP xijlQ xJfkX xCvb xZrbr xXHkfDr xdlar xUlfrSU xUjmB xDb xiDQk xy xCmi xDkbPir xZnKr xiZDwh xCTlDkbmDr xiZDwh xZrbr xXHkfDr xdlar xiBVoPsx xUlfrSU xDbUrDr xCvb xVbwakVwQ xCkfrSU xVQwb xSrUrDr xiBflTkUmD xCTlDkbir xfBHlQ xbDwEk xFak xjs xCmi xDkbPir xZrbr xEldkW xDlak xFak xUlfkbD xUlbuT xDk xjnDwZ/xCuNsxb xFrbDkUnUm xjs, xCQ: xCnir xQnbBQ xbSwS xDbUr xDk xiflUa xUlfrSU xjs xy
2. xCkVir xCvb xiflUa xUlfrSU xjs xDl xjZrB xSlar xFar xDkFJkQZrB xir xVUwUk xUBXb: 199 xir 200 xCBFwbrJm xZrB xjs xCvb xVUwUk xUBXb : 201 xir 202 xFnJbkQm xYkhkZrB xjsB, xCQ: xZsB xaj xiYm xVUwUr xYdmYkAQm xiZK xUjmB xiDQk xy xCmidlar xYm xZnKr xiDwhZ xCvb xVbwakVwQ xCkfrSU xVQwb xDbUr xDr xiBflTkUmD xCTlDkbxir xYm xfBHlQ xbDwExk xFak xjs, xCQ: xCnVbuDwQ xiBSYsxZrB xSlak xFak xUlfkbD xCuNsxb xUlbRsxD xCrfB xfwaRsx xjs xCmidlar xbS xDbUr xDr xdlar xZrbm xCkVir xVwbkRsxUk xjs xy xCQ: xZnKr xUfikbm xJrdir xQnbBQ xZnDwQ xDbUrDr xCkSrg xJkbm xDbUr xDk xUZwb xUlfrSU xjs xy

#. This grievance made by the petitioner in the special civil application and by his learned counsel during the course of arguments, is replied by the detaining authority in its reply in para-11, which reads as under:

11. With reference to para 6 (4) of the petition, I say and submit that the petitioner is well conversant with theGujarati language and at page No.129 the Statement of the petitioner dtd.14/4/2000 was recorded, wherein

he has stated that he is staying in Gujarat State since long and he can read and understand Gujarati language very well. Moreover, at the time of execution of the order of detention, the petitioner has made endorsement before the Police Inspector, Makarpura on 9/1/2001, that he is staying in Baroda since last 17 to 18 years andhe can very well read, write and speak Gujarati and Hindi languages. Hence, there is no question of supplying the grounds of detention in the mother tongue of the petitioner.

#. The State of Gujarat has not given reply to this grievance of the petitioner.

#. During the course of arguments, both the learned counsel for the parties in support of their contentions placed strong reliance on the statements of the petitioner recorded on 14-4-2000. The translation thereof, as stated earlier, is submitted by both the counsel. The petitioner made statement on 14-4-2000 that his native place is Village Salimpur Tal. Bhadoi, Dist. Bhadoi, Banaras, U.P. and since last 12 years he is staying in Gujarat State and, therefore, he is able to read and understand Gujarati language. However, he cannot speak or write Gujarati language.

This part of the statements of the petitioner is relied by learned counsel for the respondents in support of his contention that the petitioner is well-conversant with Gujarati language and this grievance made is wholly untenable. In contra, learned counsel for the petitioner pressed in service that part of the statements of the petitioner which reads as under:

"The aforesaid statement of reply right from para-1 to 6 have been read over and explained to me in gujarati and Hindi language and i have made understood regarding the same. Reply being true and according to my version. I have made signature below it after reading and believing the same to be true.

Further part of the statements of the petitioner relied upon, reads as under:

"The aforesaid reply of Shri Kapurchand M .. Raghunath has been read over and explained to

him in Hindi language in my presence and he has been made understood about the same. Reply is true and correct according to version of Kapurchand. I have made signature below.

#. Learned counsel for the petitioner has not produced on the record of this petition the copy of his aforesaid statements. However, it is not in dispute that though statements were recorded in Gujarati, the same were read over and explained to the petitioner in Gujarati and Hindi.

##. From the statements made by the petitioner I find that it is not the case of the petitioner that he does not know Gujarati. His case is that his mother-tongue is Hindi. The petitioner has not disputed his long stay in Gujarat. The petitioner belongs to, as per his own case, a business family. From the statements made that the petitioner can not speak or write Gujarati language, it does not mean nor it can be taken that he does not understand Gujarati. In his representation also, he has not come up with the case that he does not know Gujarati at all. In reply to the special civil application, the detaining authority has made a categorical statement that the petitioner is well conversant with Gujarati language. Reference has also been made to page No.129, the statement of the petitioner dated 14-4-2000 wherein he has admitted that he is staying in Gujarat since long and he can read and understand Gujarati language very well. Reference further has been made to the endorsement of the petitioner made at the time of execution of the order of detention before the Police Inspector, Makarpura on 9-2-2001 wherein he stated that he is staying in Baroda since last 17 to 18 years and he can very well read, write and speak Gujarati and Hindi languages. These statements made by the detaining authority in reply are not controverted by the petitioner as stated earlier, he has not chosen to file reply to the special civil application. In view of the statements of the petitioner dated 14-4-2000, that he is able to read and understand Gujarati language, he is residing admittedly in Gujarat for a long period, belongs to a business family, and the endorsement made by the petitioner before the Police Inspector, Makarpura on 9-2-2001 at the time of execution of the detention order that he can very well read, write and speak Gujarati and Hindi languages, this contention raised by the learned counsel for the

petitioner is wholly misconceived and on the face of it is based on a concocted and manufactured defence of the petitioner.

##. Be that as it may, from the petitioner's own statement, it is clear that he can read and understand Gujarati. He cannot speak or write Gujarati language but that is not relevant for the purpose of this case. When the petitioner is able to read and understand Gujarati, this contention raised is wholly untenable. Reliance placed on the decision of this court in the case of Brijlal Ambaram v. Commissioner of Police, Surat (supra) is of little help to the petitioner. In that case, there was no dispute that the detenu therein was given two documents which were in English and he was not knowing that language. Here, in this case, the petitioner is able to read and understand Gujarati language and as such, translation of those documents was not required to be given to him. For abundant precaution, those documents have been read over and explained to him in Gujarati language also. The first contention raised by learned counsel for the petitioner is without any substance and merits.

##. Re.: second contention. In case this contention made by petitioner is accepted it will amount to give premium to the detenu for his own creation or extension of benefits for his own wrong. The petitioner was absconding for seven months and sixteen days and only after strenuous efforts made by Vadodara Police, the petitioner was arrested. The petitioner was evading arrest and naturally the detention order could not have been executed. The police has made all the efforts to trace out the petitioner at his residence and the place of business but he was not found. Time and again, search was made by police for his arrest but police could not get success till 9.1.2001. It is not a case of delay in passing of detention order or serving of detention order. It is a case where the petitioner has gone underground and has not made available himself for arrest. The learned counsel for the petitioner, relying on the provisions of Section 7 of the Act, 1980, contended that this plea of the respondents that the petitioner was absconding should not be accepted. In case it would have been a case of absconding of the petitioner, powers as available to the police u/s.7 of the Act, 1980 would have been pressed in

service. I do not find any substance in this contention. Rejoinder to the reply filed by detaining authority has not been filed by petitioner and the averments made by the detaining authority that the petitioner was absconding and he could not be arrested despite of making all the efforts has to be accepted. Otherwise also, Section 7 of the Act. 1980 may be last resort to be made. This is for the help of police and not as a defence available to the detenu in the detention matter. The second contention raised by learned counsel for the petitioner is also without any merits and substance.

##. Re.: third contention. In paragraph-5 of the reply to the special civil application filed by the detaining authority, it is stated that the order of detention dated 23.5.2000 has been forwarded to the State Government along with the grounds of detention on the very same day, i.e. 23.5.2000. A categoric statement has been made on oath that the State Government vide order dated 3.6.2000 has approved the order of detention which is within prescribed time limit of twelve days as contemplated under sub-section 3 of Section 3 of the Act, 1980. The State Government also in paragraph-2 of its reply to the special civil application made a categoric statement on oath that the order of detention of the petitioner dated 23.5.2000 made by the detaining authority was approved by the State Government on 3.6.2000, i.e. within prescribed time limit of twelve days as per the provisions of sub-section 3 of the Act, 1980. As said earlier, the petitioner has not filed rejoinder to the reply filed by respondents detaining authority as well as State, and as such, the averments made therein stand uncontroverted and the same are taken to be correct. This is a question of fact and where both, the detaining authority and the State Government have made a categoric statement that on 3.6.2000, the order of detention of the petitioner has been approved, in the absence of any denial thereof or any material produced to controvert it by petitioner, same has to be accepted. It is a case where the order of detention of the petitioner made by the detaining authority on 23.5.2000 has been approved within stipulated period by the State Government as provided under sub-section 3 of Section 3 of the Act, 1980. So this contention raised by learned counsel for the petitioner cannot be accepted.

##. Re.: contention No.4. In view of the fact that the petitioner has no case on merits, it is not necessary to go on and decide this contention raised by learned counsel for the petitioner that on the representation filed by petitioner, the authority has to pass a speaking order. However, prima-facie, I am of the opinion that this contention may have some substance but it will be decided in an appropriate case. In this case, at the cost of repetition, it is to be stated that on merits, the petitioner has no case and even if it is held that the respondents have to make a speaking order on the representation of the petitioner against his detention, it will make no effect on the merits of the case and will not vitiate the order of detention. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted earlier stands vacated. The petitioner is directed to pay cost of this petition to the State of Gujarat which is quantified at Rs.1,000/=.

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